

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:18CR708
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
vs.)	
)	
KENNETH TYSON,)	ORDER
)	
Defendant.)	

CHRISTOPHER A. BOYKO, J.:

On June 18, 2019, the Government filed an Application for Production of Records Before Trial in accordance with Rule 17(c) of the Federal Rules of Criminal Procedure (the “Application”). (Doc. 37). The Government sought the issuance of four separate subpoenas.

On July 1, 2019, Defendant moved to oppose the Government’s Application. (Doc. 41). Defendant argued (1) that the Government’s utilization of a Rule 17(c) subpoena in this manner would constitute an abuse of power; and (2) that the requested subpoenas did not satisfy the standards pronounced in *United States v. Nixon*, 418 U.S. 683, 698 (1974).

On September 23, 2019, the Government filed its Reply. (Doc. 53). The Government argued Defendant did not have standing to challenge the Government’s Application. However, the Government stated that it would “withdraw its pending request for the 17(c) subpoenas and submit a new application requesting Rule 17(c) subpoenas to the same entities that will be limited to certified documentation of the location of the email servers for the specified addresses.” (*Id.* at 479).

Given the Government's position on the Application, the Court **DENIES** the Application (Doc. 37) **WITHOUT PREJUDICE**. The Government may file a new application for Rule 17(c) subpoenas in accordance with Rule 17 and the standards set forth in *Nixon*.

IT IS SO ORDERED.

s/ Christopher A. Boyko
CHRISTOPHER A. BOYKO
United States District Judge

Dated: October 2, 2019